IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No. 11942 of 2005
Date of Decision:5-3-2007

Sat Pal Puri ...Petitioner

Versus

State of Punjab and others ...Respondents.

CORAM:- HON'BLE MR. JUSTICE K.S.GAREWAL
HON'BLE MR. JUSTICE AJAI LAMBA

Present: Shri Sudeep Mahajan, Advocate with
Shri Sham Lal Bhalla, Advocate,
for the petitioner

Shri A.G.Masih, D.A.G. Punjab
for respondents No.1 and 2.

Shri D.V.Sharma, Advocate,
for respondent No.3

Mr. Amar Vivek, Advocate,
for respondents No. 4 to 6.

Shri Deepak Sibal, Advocate,
for respondent No.7.

K.S.GAREWAL,J.

Sat Pal Puri was elected as Municipal Councillor, Municipal

Corporation, Ludhiana (Ward 66) in June 1997. On August 21, 2001 an order was passed by the Principal Secretary, Department of Local Government, holding that Sat Pal Puri had incurred a disqualification and he was ordered to be removed as a Councillor of the Corporation, under the provisions of Section 36 (1) (b) of Punjab Municipal Corporation Act, 1976. This provision enables the Government to remove a Councillor if " he has flagrantly abused his position as a councillor or has through his negligence or misconduct been responsible for the loss of misapplication of any money or property of the Corporation."

Sat Pal Puri filed C.W.P.No. 1572 of 2001 challenging his removal. The petition was dismissed by a Division Bench on May 29, 2002. The petitioner went up in appeal to the Supreme Court. The Special Leave Petition was also dismissed on January 8, 2003 with a clarification that the civil suit shall be decided on its own pleadings and material available on record, uninfluenced by the findings arrived at by the High Court and the impugned order which shall be treated as limited for the purpose of the Punjab Municipal Corporation Act, 1976.

However, Sat Pal Puri was re-elected as Councillor in May 2002 and was again removed by the Principal Secretary on October 29, 2004. He filed C.W.P. No. 20278 of 2004 to challenge his removal on the ground that the Principal Secretary had not granted him an opportunity of hearing. He had been heard by the predecessor, when the new Principal Secretary took over, he passed the impugned order without hearing the petitioner. The petition was allowed, the order was quashed and matter was remanded back for passing an appropriate order, after granting a reasonable opportunity to the petitioner of being heard. The case was

reheard and the impugned order dated June 29/July 8, 2005 (Annexure P-39) was passed.

The matter which is required to be considered in the present petition is quite straightforward although the factual matrix is somewhat complicated. Therefore, it would be appropriate to begin from the beginning of the litigation between the Councillor and the Municipal Corporation. This would help us to understand what precisely is the defence of the petitioner.

Sat Pal Puri was elected Councillor of the Ludhiana Municipal Councillor in June 1997. He filed the civil suit for permanent injunction on June 2, 1999 against one Rajinder Kapoor (copy of the plaint is Annexure R-4/1). Sat Pal Puri's plea was that he had purchased property measuring 0B-3B-0B situated in Taraf Sekhewal, District Ludhiana. The property was bounded by the land of Sukhdev Singh (East), street (West), street (North) and Budha Nala (South). This property had been purchased from Sukhdev Singh and others vide sale deed August 12, 1998. Sat Pal Puri had taken possession of the property. The seller had earlier submitted plans to the Municipal Corporation for sanction to raise construction over the property and had also deposited the requisite fee on July 16, 1998, a month before the sale. No permission was granted but the construction was carried. The petitioner had presumed that the Municipal Corporation had no objection, as a period of 60 days had expired. When the Municipal Corporation through Rajinder Kapoor threatened to stop the construction, Sat Pal Puri filed the suit seeking permanent injunction against Rajinder Kapoor. Upon filing the suit the Trial Court passed an order restraining the defendant from interferring in the construction being raised or to be raised over the suit

property. The injunction remained in operation till September 5, 2000 when the Trial Court vacated the injunction. From the record it is clear that the plaintiff had not originally impleaded the Municipal Corporation and it's Commissioner as defendants 2 and 3 in his plaint but the amended plaint mentions the names of the newly added defendants who were impleaded through an amendment. The original plaint is Annexure R-4/1 and the amended plaint is Annexure R-4/2.

The order passed by the learned Trial Court on September 5, 2000 vacating the injunction was challenged before the learned Additional District Judge, Ludhiana and on September 23, 2000 the appeal was disposed of by restraining the Corporation from interferring and demolishing the building to the extent of 225 square yards in Khasra 697/358. This khasra No. 697/358 and khasra 166 mentioned in the sale deed were not correct. This had later on been corrected through a supplementary sale deed /tatim nama dated September 14, 2000.

It was at this stage that the first show cause notice was issued to the Councillor culminating in his removal on August 21, 2001, his unsuccessful challenge through C.W.P. No. 15572 of 2001 in which he went right upto the Supreme Court. It is not clear how the Councillor managed to be re-elected in 2002. Suffice it to say that the ground which led to his removal from councillorship continued to survive. This led to his removal for the second time from councillorship, and to the filing of the present petition.

The contesting respondents in this petition are the State of Punjab, Director (Local Government), and the Municipal Corporation. Surinder Kumar respondent 4 and Ajit Singh Dhillon respondent 7.

Respondents 4 to 6 had been impleaded as respondents on December 12, 2006 in view of the fact that in the earlier writ petition they were ordered to be impleaded as respondents. Respondent 7 was also impleaded on December 12, 2006, as in the bye-election caused by the removal of the petitioner, this respondent had been elected as Municipal Councillor.

This petition was adjourned sine dine on August 9, 2005 to await the decision of the civil court. Sat Pal Puri's suit for permanent injunction was decided by Civil Judge, Junior Division, Ludhiana on September 19, 2006. Copy of the judgment is Annexure P-42. The learned Trial Court came to the conclusion that the plaintiff was the owner of the suit property. The Trial Court was aware of the fact that the Supreme Court had clarified that the civil suit shall be decided on its own pleadings, evidence and documents available on record uninfluenced by the findings arrived at by the High Court in the impugned order. Therefore, acting on the pleadings, evidence and material available on the record, the learned Court concluded that the plaintiff had to prove that the plot in question was a part of khasra 697/358, 166 khatta 249/261, 547/582. This was really a matter of demarcation which was done by the Revenue Authorities. The demarcation was not accepted by the Municipal Commissioner, its plea that Sat Pal Puri had manipulated the records was not accepted. Sat Pal Puri's suit was thus decreed.

The Trial Court had certainly found in favour of the Councillor but whether the Councillor had committed any act which would tantamount to flagrant abuse of the position is what this case is all about. The decree cannot have any impact on the proceedings conducted against the Councillor under the Punjab Municipal Corporation Act. The suit and the

proceedings, based on different causes of action. A detailed show cause notice dated July 21, 2003 was served and the consequent proceedings were conducted by Principal Secretary, Local Government of Punjab. These culminated in the impugned order being passed on June 29, 2005. In these proceedings the Councillor's reply to the show cause notice was that the land in question had never been acquired by the Municipal Corporation for carving out a road. The land was owned by his predecessor-in-interest and he purchased it for valuable consideration on August 12, 1998. The sale deed was later corrected on September 14, 2000 through a correction deed and area of khasra 166 was taken out of the sale deed. Furthermore, the Councillor contended that he raised the construction on the basis of building plan sanction on July 16, 1998 (actually there is no sanction letter but the party raised the presumption of sanction after 60 days) . It was contended by the Councillor that the shops stood regularized vide order of Additional Commissioner dated July 6, 2001 and composition fee was deposited vide three cheques for Rs. 20,000/-, Rs.9475/- and Rs.9000/-. The Councillor had also given his consent for widening the road by 10 feet. He had not been held disqualified to contest the election for the second time.

A serious conflict of interest is involved in the present case, between a Councillor and the Corporation. Such a competing interest would make it difficult for the Councillor to function impartially. Conflict of interest can create an appearance of impropriety that can undermine public confidence. The petitioner was not unaware of the civil litigation and of his duties as Councillor. He ought to have disclosed his interest in the property at the very outset. He should have made deeper enquiries into the application filed by his predecessor-in-interest for sanction of building

plans. Every Councillor is expected to observe a certain minimum of code of ethics which forbids conflict of interest arising and which required that conflict of interest must be disclosed and the Councillors' peer group should not doubt his actions and the interest of the Corporation in the whole matter should be protected.

The Principal Secretary referred to the report of the Chief Town Planner dated May 29, 2001 that the shops built by the petitioner had encroached the road by 80 feet. The shops were right in the middle of the road. The said report also highlighted similar enroachments by other persons. The Principal Secretary recorded that the previous owner of the property had submitted building plan on July 16, 1998 in respect of khasra 697/358 for construction of godowns and deposited a sum of Rs.1140/- alongwith the application for sanctioning building plan. This building plan was rejected by the Corporation on October 30, 1998 and it was during the interim period that the Councillor had purchased the property. It is easy to see that the Councillor had done so in the hope that he would be able to get all impediments and hurdles on the development of the property removed through his influence in the Corporation. The following passage from the judgment in CWP No. 15572 of 2001 decided on May 29, 2002 would make the whole matter amply clear:-

> "On the specific objection having been raised by the petitioner, the Principal Secretary asked the Chief Town Planner for his detailed report alongwith the site plans of the T.P.Scheme. It was reported by the Chief Town Planner on 29-05-2001 that the showrooms were built by the petitioner by encroaching on the 80 feet wide road and the shops are right in the middle of the

road. A perusal of the impugned order shows that the report also highlighted similar enroachments made by the other persons. The Principal Secretary, Local Government considered the reports and status of the encroachments and afforded another opportunity to the petitioner on 06-08-2001. It was further the elaborate procedure having been followed that the impugned order has been passed. Predecessor-in-interest of the petitioner submitted the building plan on 16-07-1998 in respect of khasra No.697/358 for construction of godowns and deposited a sum of Rs.1140/- along with the application for sanctioning the building plan. His building plan was rejected on 30/10/98 by the Corporation and it was during the period that the petitioner purchased the land. It shows that the petitioner purchased the disputed land which is ordinarily available in the market at cheaper rates. It would also lead to inference that the petitioner purchased the property with the intention to exert his influence and get all the local hurdles removed for getting that the arm of law can not reach any where the law breaker is found. Therefore, we are of the view that the findings recorded by the Principal Secretary, Local Government that the petitioner has misused and abused his power as a Municipal Councillor are correct. In as much as, he secured the certificates from unauthorized authority is respect of khasra No.697/358 certifying that the area was not covered by the Town Planning scheme, New Shiv Puri Part-I and also that he has raised construction of shops on the area without due approval of

> building plan under the garb of stay order of court the shops have been found in the middle of 80 feet wide road along with Budha nalla, which land belongs to the Corporation under the Town Planning scheme. Therefore, we are constrained to hold that there is no jurisdictional error in the impugned order passed by the Principal Secretary and the writ petition is liable to be dismissed."

The main question which arises in this case is how to balance the rights of Sat Pal Puri (plaintiff) and the duties of Sat Pal Puri (Councillor). The petitioner had access to all municipal record and knew the strength and weakness of individual cases relating to municipal properties. As plaintiff his interest was different, purely selfish and personal. If the petitioner succeeded in the civil litigation in a fair manner, it would not have had any impact on his conduct as Councillor because he had employed fair means to achieve his objective. The main plea raised by the plaintiff was that building plan had been submitted for sanction to the Municipal Corporation by his predecessor-in-interest Sukhdev Singh on July 16, 1998 and as period of 60 days expired after the plan was submitted, it was presumed that the plan had been sanctioned. The defence of the Municipal Corporation was that the application had been received in its office from Sukhdev Singh on July 16, 1998 and it was rejected. An entry in this respect had been made in the proceedings book at serial 5. It was further pleaded in defence that the case involved encroachment on a 80 feet wide road. Construction could only be raised after the plan was sanctioned. The building plan submitted by Sukhdev Singh had been rejected.

The learned Civil Judge (Junior Division) Ludhiana, framed

issues and came to the conclusion that the plaintiff was the owner of the suit property in respect of which he had also got an amended sale deed executed on September 14, 2000. The Court further held that to prove his ownership of the suit property the plaintiff got the land demarcated through Tehsildar who appeared in the Court and proved his report. The objection taken to this demarcation was that it had not been properly done as no permanent point was taken. The Court found that the fixed point from the Budha Nallah was taken which could not be doubted. The property belonged to the plaintiff and the Municipal Corporation had no concern with it. It was held that the Municipal Corporation did not maintain any register of encroachments as required under Section 169 (3) of the Punjab Municipal Corporation Act. In this respect the argument of the plaintiff was that in the absence of any entry in such register regarding a specific area having been encroached by certain persons the Municipal Corporation's defence was not established. According to the Corporation, the plaintiff had manipulated documents but the Court had held that the plaintiff was only a Councillor and was not required to record the ACRs of the employees of the Corporation, so the documents produced on the file cannot be said to have been forged or manipulated by him through his influence. Resultantly, the Court decreed the plaintiff's suit to restrain the Corporation from interfering in peaceful possession of his property.

The petitioner has won the civil suit but on its basis can he succeed in this petition ? The answer is in the negative. The reasons for this are that the petitioner had been issued show cause notice by the Government on November 18, 2000 calling upon him why he should not be removed under Section 36 (1) of the Act from the seat of Municipal

Councillor. There were two charges against him (a) that he managed to get Khasra 697/358 out of New Shivpuri Part-I Scheme on the basis of certain hadud certificates that had been issued by an unauthorized officer and (b) that he had raised construction under the garb of the stay order whereas there was no construction on the spot when the order of stay was granted.

A Councillor's position is a position of trust but when he engages in a hotly contested litigation with his Corporation and bases his case on a mere presumption of sanction, regularization of the construction and payment of composition fee, giving consent for widening the road by 10 feet, one is left to wonder if the Councillor as a individual citizen has succeeded in outwitting the Municipal Corporation by using clandestine and insider methods. If the Councillor had been a lesser mortal then one could say that the points in his favour in the civil suit were neither contrived nor manipulated. But here is a case where the Councillor flagrantly misused his position to outwit and outsmart the very Corporation of which he was one of the trustees. Every councillor is accepted to protect and safeguard Municipal lands from encroachment but when he tries to use his official position for his personal gain, one would be left to wonder at the state of affairs.

Under Section 36 of the Punjab Municipal Corporation Act, the Government may remove any councillor if in the opinion of the Government he has flagrantly abused his position as a Councillor or has through negligence or misconduct been responsible for the loss of misapplication of any money or property of the Corporation (Section 36 (1) (b).

It is under the above provisions that the petitioner has been removed. The petitioner succeeded in the civil suit but that was a case where he had sought a decree of permanent injunction. The petitioner based

his case on the presumption of sanction whereas the Corporation had taken a definite stand that the plan had been rejected. If this is not flagrant misuse of position by a Councillor, then what is ? The petitioner bought the property after he became Councillor, he started construction on the property without getting the plan sanctioned and used his position to see that the case was weakly defended by the Corporation. The petitioner succeeded in his design in getting the injunction but this was done by mis-use of his authority. Therefore, we find no reason to interfere with the orders passed by the Government removing the petitioner from the seat of Municipal Councillor.

Consequently, writ petition is dismissed.

(K.S.GAREWAL)
JUDGE

(AJAI LAMBA)
JUDGE

March 5, 2007
RSK/prem